

PUBLIC HEARING
Town of Milton
Milton Library 121 Union Street
Monday, October 7, 2013 6:00 p.m.

Transcriptionist: Helene Rodgville
[Minutes are not Verbatim]

1. Call to Order – Mayor Jones
2. Moment of Silence
3. Pledge of Allegiance to the Flag
4. Roll Call – Mayor Jones

Vice Mayor Booros	Present
Councilman West	Present
Councilwoman Patterson	Present
Councilman Coté	Present
Councilman Collier	Present
Mayor Jones	Present
Councilwoman Parker-Selby	Absent

5. Additions or Corrections to the Agenda
Mayor Jones: Are there any additions or corrections to the Public Hearing portion of the agenda this evening?
6. Agenda Approval
Councilman West: Madame Mayor, I make a motion that we approve the agenda.
Councilwoman Patterson: Second.
Mayor Jones: We have a motion and a second and barring no discussion, all those in favor say aye. Opposed. Motion carried.
7. **Public Hearing:**
 - a. An ordinance to amend Chapter 220 of the Town Code relating to permitted principal uses and special permitted uses
Seth Thompson: This proposed Ordinance amends your zoning code as it relates to the Town Center District and what it does is it removes restaurants, both standard and fast food, from the list of special permitted uses, where you have to go and get a special permit and it would place them into the permitted principle uses. So in other words, if somebody wanted to open up a restaurant, whether it's a standard or a fast food in the Town Center, they wouldn't have to go through any special process to get the additional permit. That would be an automatically approved use. I'm happy to answer any questions that you guys have now, or any that arise coming out of the public's comments.
Mayor Jones: And we will take public comment, if you'll just come to the microphone and state your name. We'll ask you to hold your comments to three minutes and since

there are so few here, if you need to get back in line and speak again, that would be okay.

Virginia Weeks, 119 Clifton Street: I'd like to know is this amendment going to be referred to the Planning and Zoning for a recommendation?

Seth Thompson: It will be. Yes.

Virginia Weeks: Thank you. I'll hold my comments.

Vice Mayor Booros: Excuse me. No wait a minute. It will be?

Seth Thompson: I guess that's all...

Vice Mayor Booros: Your recommendation to this Council is that it maybe should be, but I don't necessarily agree with your recommendation.

Seth Thompson: Okay, so I'll rephrase my recommendation. I think it should be based on the fact that you seem to have two contradictory terms in your Code.

Vice Mayor Booros: Yes, absolutely.

Seth Thompson: One says that the Council can do it on their own motion, I believe is how it's phrased. Doing it, meaning amend the Code and the other says that everything needs to be referred to Planning and Zoning.

Vice Mayor Booros: Right and I contend that maybe we should change that shall be sent to Planning and Zoning, to may be sent to Planning and Zoning; because I can envision an opportunity where we would send something back to Planning and Zoning that that Commission wouldn't agree upon, whereas all seven members of this Mayor and Council do agree upon and it never being put back on our agenda, because that part of the Ordinance does not say they will look at it at the next meeting and return it to us within thirty days. Excuse me, Ms. Weeks, I'm speaking.

Virginia Weeks: I'm not saying a word.

Vice Mayor Booros: You were about to.

Virginia Weeks: Nope, I'm going to say it when you're done.

Vice Mayor Booros: This Ordinance we can not ever be held hostage by any one of these Committee's. This Mayor and Council can't and I think it would be a lot easier to change the word shall in that second part of the Ordinance, to may, in this particular case and that this Ordinance needs to go through. You talk about stifling business. That's exactly what this administration has said since day one, we're going to stop doing and if we can go by the first part of that Ordinance which says from time to time, this Council can approve it; I say from time to time this Council ought to approve it and not send it back to Planning and Zoning. I sat through too many of those meetings in this last year, where the paperwork wasn't right, come back in a month. Come back in a month. Come back in a month. That's exactly what changing this Ordinance to an approved use, is going to stop.

Seth Thompson: Vice Mayor Booros, I certainly agree with the notion, if only to make your Code internally consistent that may; changing it to a permissive language; makes sense; especially, it's very easy to think of a scenario where the zoning code needs to be tweaked on some very minor level and having that process go through a Public Hearing in front of Council, as well as the Planning and Zoning recommendation process, would be seemingly a lot of time.

Vice Mayor Booros: Counselor, I don't think there's one person sitting at this table, out of seven; that thinks they need a recommendation from Planning and Zoning...

Virginia Weeks: Then why have it?

Vice Mayor Booros: Excuse me. Excuse me.

Virginia Weeks: Dismantle Planning and Zoning.

Vice Mayor Booros: I didn't say dismantle Planning and Zoning. I said this particular part of this ordinance. I think that this Council doesn't need a recommendation on something this Council feels needs to be fixed and in this particular case, I think the word shall in that particular thing could be changed to may; send it back to Planning and Zoning for their recommendation; because I'm sure a lot of things are going to be brought before this Council that we feel we need to know more information on; we need their expertise; but in this particular case, this is something that never should have been and I don't think that there's one person sitting up here... There may be one out of seven that needs that recommendation, but I don't think there's anyone here. We had a first reading. We all voted to go forward with a second reading and a Public Hearing. I can't imagine if seven of us all said yes for a Public Hearing and think that we need to send it back to waste one more minute. I don't know that I'm the only one that's going to speak here, but I've spoken my piece.

Seth Thompson: I certainly appreciate your comments and I think they hint at the fact that some changes are very, very broad; some changes are going to have a much larger effect on the community as a whole and occasionally you have a zoning issue that I can even envision a scenario where you're correcting a typographical error basically; to have to send that to Planning and Zoning, as well as hold a Public Hearing at the Council level and have two readings, seems like an awful long process for something that might be a very small scope and then there are, of course, major issues; rezoning issues; changing the map that you're going to want that level.

Vice Mayor Booros: Absolutely. So I'm not saying it should never happen, but I'm saying the word shall in this particular case... I'd rather change the word shall, to may, and change that Ordinance to say and the Planning and Zoning Commission shall return to Council their recommendation within so many days. That Ordinance just leaves it hanging.

Seth Thompson: I thought there was a 45 day...

Virginia Weeks: There is.

Vice Mayor Booros: Is there a 45 day in there?

Virginia Weeks: There is.

Seth Thompson: Well, of course to get that... changing the shall to may...

Vice Mayor Booros: You have to go through them.

Seth Thompson: Obviously we have to...

Vice Mayor Booros: You have to go through them, don't you?

Seth Thompson: Right.

Vice Mayor Booros: Unless from time to time we decide to make that change and I think is one of those times.

Virginia Weeks: 220-89.

Councilman Coté: We're not on the agenda to make that change, are we?

Seth Thompson: Right, so that will have to be a different Ordinance and again, it will have to go through the current process, because the Ordinance changing the process, needs to go through the current process.

Vice Mayor Booros: Yes and that's what's wrong with our Ordinance. I think to stall one more minute on this particular issue, which is something that never should have been there to begin with, I don't know what Planning and Zoning's recommendation is going to be to this Council that's going to make us change our mind to make one more business have to jump through hoops to open up in this town.

Virginia Weeks: Nobody's trying to make a business jump through...

Vice Mayor Booros: You just did.

Virginia Weeks: When?

Vice Mayor Booros: He says that the first part of that Ordinance allows us from time to time to make the decision ourselves.

Virginia Weeks: But there might be things that you are not aware of that Planning and Zoning is.

Vice Mayor Booros: I'm sure that the...

Virginia Weeks: May I point one out, Madame Mayor?

Mayor Jones: Sure.

Virginia Weeks: I mean, I don't want this to jeopardize, if this comes to Planning and Zoning, my ability to comment on Planning and Zoning.

Vice Mayor Booros: It has, as far as I'm concerned it already has.

Virginia Weeks: However, I wanted to point out to you that fast food doesn't have a tight definition. That means McDonald's, Quizno's, Subway and that there are parcels on Union Street, in the center of Town Center, that are not in the Historic District; so anything could be built there, of any design, with any kind of signage and I have a map here to show you from the latest Comprehensive Plan Update. There are things like that Planning and Zoning should come back and say to you, are you aware? We would recommend that this is a good idea, but you need to do this to protect the historic part of our town.

Vice Mayor Booros: This applies to the Town Center.

Virginia Weeks: I don't think that's anti-business. I think that's pro-business. We have new people, investing a great deal of money in this historic part of our town, that have a vision and a future. If you're going to allow fast food, Subway, Quizno's, whatever to come in and should they purchase a parcel that is not under the Historic District where design control is, they can put up the golden arches of McDonald's. If you want to go ahead and quickly pass that through, fine.

Vice Mayor Booros: Is the Town Center all in the Historic District?

Virginia Weeks: No, I have the map here John.

Vice Mayor Booros: I'm asking a question. Is the Town Center in the Historic District?

Virginia Weeks: This is the map from the Comprehensive Plan. It's legal. Here's Union Street, here's Federal Street. Do you see that piece there, on that side. It's not in. You see that piece there, it's not in. This is the Library. This is between the pond and Federal Street. There are pieces that are not in the Historic District.

Vice Mayor Booros: Ms. Weeks, if you had been at that Council Meeting, you would have known we discussed fast food; it came up in that meeting; fast food and the definition of fast food and the fact that somebody may want to open up a fast food and I also think there was only one or two people on this Council that thought a fast food restaurant might be an issue. It even got to the point where they called it a franchised fast food restaurant, as opposed to just a fast food restaurant; because the Vintage Cafe, Irish Eyes, Gary Murr's Coffee Shop; they're all considered fast food according to our Ordinance. Every one of them.

Virginia Weeks: But so is McDonald's; that's why I'm saying...

Vice Mayor Booros: Quite honestly, Ms. Weeks, I don't have a problem with a McDonald's in this town, between you and me.

Virginia Weeks: In the middle of the downtown area?

Vice Mayor Booros: I don't have a problem with it whatsoever.

Virginia Weeks: Okay, then it's done.

Vice Mayor Booros: I've seen them in Historic Districts in Old Town Alexandria, in Georgetown. I've seen...

Virginia Weeks: Where they have design control. We don't have it.

Vice Mayor Booros: Well we could have design control, maybe that's what needs to be fixed.

Virginia Weeks: Only if you incorporate those parcels into the Historic District.

Vice Mayor Booros: Okay.

Virginia Weeks: But if they buy a parcel that is not in the Historic District, they could put up the golden arches of McDonald's right on Union Street and I'm not sure that's what you want to do, and that's why I asked if it was going to Planning and Zoning, so we could bring that back to you. Thank you. I am not anti-business. I am looking forward to restaurants and stuff opening in downtown Milton. I would love it, but you have to protect the goose that's laying the golden egg and it's Union and Federal Streets. Thank you.

Seth Thompson: And just to clarify for Council, my recommendation for a Planning and Zoning advisory report was based on the fact that when you have a situation when you have two conflicting statutes, I would think that the law would prefer to have more due process over less due process. You have an argument that one section says you can do it on your own motion, but then the very next section says that everything has to go to Planning and Zoning and then it would be on their recommendation.

Vice Mayor Booros: And Counselor, my problem with the whole process is I sat through a couple of Planning and Zoning meetings this year, where the people weren't provided with the information they shouldn't have been provided with and they were asked to come back in a month. One more time, come back in a month. You are once again, Counselor, because somebody overlooked this, is saying, come back in a month; one more time come back in a month. Excuse me, it's not even a month, it's 45 days from their next meeting.

Seth Thompson: So the Planning and Zoning Commission if they fail to report within 45 days of receipt of notice, then the Council can act without a report.

Vice Mayor Booros: All I'm saying is, it's one more time where we are not being business friendly and I don't want to throw blame at anyone for missing this twice, that this has come up, but we've missed it.

Councilwoman Patterson: I think if it's a clear cut situation and if we change the word from shall to may, then Council can look at it. But again, if we have a second step where there might be some concern, Council can send it to Planning and Zoning...

Vice Mayor Booros: Absolutely, if they feel there's a concern.

Councilwoman Patterson: If they feel there's a concern, so there still is oversight, but Council still has the ability to make the decision if it's like Seth said, if it's some small changes; because it is a long process for small businesses and I get lots of telephone calls from the business downtown; there's been a couple of situations; not just one, but several, where the information wasn't laid out clear and concise and because summer season was coming up, a situation couldn't be handled until the end of the summer and it was something that was going to make the restaurant look nuts and so if Council had had the ability to take that... I just wanted to add that.

Seth Thompson: And procedurally, it would be possible for Planning and Zoning to consider it this month at their meeting; they're on a Tuesday. They only need to comply with the seven day notice, as opposed to having the 20 day newspaper notice, which is at the Council level.

Vice Mayor Booros: Then we have to either have another meeting this month, to go back over it, or we have to wait until November; 30 more days Counselor. I'm only one of seven votes here.

Mayor Jones: Also, maybe, Mr. Thompson, you would explain that this is actually a spot point to the permitted uses; this is only one of the non-permitted, being moved to permitted.

Seth Thompson: That's correct. I know there has been talk in the past of taking a more global view and somebody really putting in the time and effort to recognize where the Code could use some updating. What we're doing here is we're changing one, arguably two uses, the standard vs. fast food; although I think Ms. Weeks is right in the sense that the definition of fast food is broader than what most people would think of as a fast food restaurant. Our Code defines it as an establishment whose principal trade is the sale of food and/or beverages in a form for consumption either on or off premises. So that's a fairly broad definition. But the Mayor's correct in that we're only dealing with one use here; moving it from requiring the special permit vs. placing it in an automatically permitted use.

Sam Garde, 115 Sassafras Lane: I'm sorry, John, I missed the meeting where this was discussed earlier, so I don't know if there is a thought for the term franchised fast food; but this conversation has managed to confuse me, so I would like to ask the Town Solicitor if the currently written Town Code permits the Council to vote tonight whether to approve this or not; without sending it to Planning and Zoning?

Seth Thompson: There is a basis in your Code for doing so, however, your Code also contains language that would indicate it needs to go to Planning and Zoning and that's why when faced with those two options, my advice would be to give more due process, over less.

Sam Garde: So the answer to my question is there are conflicting places in the Code. Now, I would also point out to you that the Code itself says where there is a conflict, the most severe shall be considered controlling; you can find that in the Town Code and I believe also in the Town Charter; so that would mean to me that the Code requires you to put it down there, because that's the more comprehensive or severe case. I've forgotten the exact language, but I'm sure you're aware of it.

Seth Thompson: In the General Provisions in the beginning of the Code.

Sam Garde: Yes. If I may, I'm in favor of the restaurant. I'm just in favor of complying with our Code.

Lorraine Wasserman, 244 West Shore Drive: I'm in favor of changing the Code. People have been sitting around here too long, without things happening. We finally have people on the Council and a wonderful Mayor who's going to push this thing through and get Milton back where it should be and we should just trust our Council people, because that's all I have to say. I'm tired of this. Thank you.

Robert Palmer, 504 Canning House Row: Regarding the special permitted uses vs. permitted principal uses, I did see on the agenda tonight under new business, where there's going to be discussion regarding the reclassification of home occupations and I wanted to speak very briefly about that, if I may.

Seth Thompson: You're at the early meeting; you'll be able to speak at the public participation section of the next meeting.

Robert Palmer: Okay. Thank you.

Mayor Jones: Is there anybody else that would like to speak on behalf of this change in Code during tonight's Public Hearing?

Ellen Passman, 305 Federal Street: I think we always have to take in consideration the voices of this town, like Virginia Weeks; where those of us who take care of the Historic District. I am sure that the Town of Milton, no matter who comes in downtown, and we need people downtown. It's a bowling alley and it has to stop. We are town with so much incredible potential that we can't do this 30 days, 30 days, it's like the check is in the mail. We do have the talent at this table to make Milton happen and if it takes passing an Ordinance, so that it's somewhere in the 21st century, I think that would be a very good thing for Milton.

Jeff Dailey, 211 Gristmill Drive: This downtown is really all the Town has in terms of a Main Street option; an epicenter to growth and attractiveness that will bring people to the Town. There have got to be... I've heard members sitting at this table comment on the size of the M&T sign and how did that get to be there? How is that very monolithic green and white sign, which is much larger than the previous bank's sign; how did that happen? And if there are not restrictions on who occupies space in this Town, then you'll be giving it all away and it won't matter that a river runs through it, because I hate to say it, golden arches will be reflected in that river and that is not a destination point town and if we don't have restrictions in place to make sure that franchisees are not like billboards in the center of our town, then we really have to be extremely careful. You look at the winner's of the Best Small Towns in America and I guarantee you, you are not going to see Taco Bell, you're not going to see McDonald's, you're not going to see drive through windows onto the main historic Main Street of those towns. It's just not going to happen; so we have to be extremely careful. We've read in the paper that we will be a town under renovation in two prime locations that have had businesses in them. I just hope that we have big signs that say, watch Milton change and grow and I hope that the tenant's come once that large hardware store building is renovated and once the new restaurant is in the building next to Federal Street Coffee Shop; let's hope that's a beginning, but please make sure that you are safeguarding all that can make Milton what we all hope it will one day be. Thank you.

Mayor Jones: Anyone else? Anything from Council? Okay we'll close the Public Hearing at 6:23 p.m.